Tiffany (NJ) Inc. et al v. eBay Inc. Doc. 20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIFFANY (NJ) INC. and TIFFANY AND COMPANY, Plaintiffs, v. eBAY INC., Defendants.	Case No. 04 Civ. 4607 (NRB)

DECLARATION OF DOROTHY N. GIOBBE IN SUPPORT OF PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO AMEND ITS ANSWER

I, Dorothy N. Giobbe, declare as follows:

1. I am admitted to practice before this Court and am associated with the firm Arnold & Porter LLP, counsel for Plaintiffs in the above-referenced action.

2. I submit this Declaration in support of Tiffany's Memorandum of Law in Opposition to Defendant's Motion to Amend its Answer.

3. Annexed hereto as Exhibit 1 is a true and accurate copy of documents produced by Tiffany at TCO 024100-110, which also were marked as Exhibit 6 to the Deposition of Ewa Zalewska, Esq.

4. Annexed here to as Exhibit 2 is a true and accurate copy of pages 52, line 16 to page 54, line 9, of the testimony of Ms. Zalewska, taken on July 20, 2005, concerning Exhibit 1.

4. I declare under penalty of perjury that the foregoing is true and correct.

Dockets.Justia.com

Dated: August 29, 2005
New York, New York

Dorothy N. Giobbe

RECYCLED

Exhibit 1

Zalewska, Ewa

From:	Zalewska, Ewa
Sent:	Tuesday, January 25, 2005 3:10 PM
To:	'doellasebay@yahoo.com'
Subject:	Counterfeit Merchandise Removed from eBay
Attachments:	Tiffany Awarded Damages Against Counterfeiters of TIFFANY.doc

Dear Ms. Perea,

Your auctions were removed pursuant to the eBay VeRO program on the good faith belief that such items were/are counterfeit for several reasons.

1. We received an e-mail from an eBay member stating that your items were counterfeit.
2. Based on our investigative guidelines, we determined that we did indeed have a good-faith belief that your items were in fact counterfeit.
3. We could determine from the photos used in your auction descriptions that some or all components of photo (packaging included) was counterfeit.

Be advised that Tiffany & Co. is the exclusive domestic distributor of Tiffany & Co. merchandise and we have no wholesalers, sale distributors, overstock, or other liquidation channels of distribution. If you have purchased your items from any such sources, they are indeed counterfeit and the sale of such goods is in violation of United States Federal Law and punishable both criminally and civilly.

Tiffany & Co. rigorously enforces its Intellectual Property rights to protect against counterfeiting and we have had much success in the investigation, and ultimate prosecution of egregious offenders. Please note the attached press release regarding our recent judgment of over half a million dollars against a former eBay seller.

Tiffany Awarded
Damages Agains...

Sincerely,

Ewa M. Zalewska
Tiffany & Co.
Legal Department
600 Madison Avenue
New York, NY 10022
ph. 212-230-5351
fax. 212-230-5323
ewa.zalewska@tiffany.com

Zalewska, Ewa

From: eBay Customer Support [vero@ebay.com]
Sent: Wednesday, December 22, 2004 4:39 PM
To: Zalewska, Ewa
Subject: Re: doellas (KMM147450837V51474L0KM)

Hello Ewa,

Thank you for sending us this Notice of Claimed Infringement and Personal Information Request.

We are pleased to inform you that the listings you reported have been removed by eBay. We have notified the sellers and all participating bidders that the listings were removed due to your request.

We are pleased to provide you with the Vendor's information. That information is as follows:

doellas / doellasebay@yahoo.com
Holly Perea, 15319 SW 15th Ave, Newberry, FL, United States, 32669
(Primary) (352) 331-8421

Should you have any other questions on the Personal Information Agreement, or concerns regarding this matter, please do not hesitate to contact our VeRO Program again.

Regards,

Sylvia
eBay VeRO Team

---

eBay
Your Personal Trading Community (tm)

****

Original Message Follows:

Dear eBay,

Please take note of seller doellas. Please also send us this seller's contact information pursuant to this Notice of Infringement.

Electronic Notice of Infringement
(Original Signature on File)
Date: 12/22/04
eBay Inc.
Attn: VeRO Program
2145 Hamilton Ave.
San Jose, CA 95125
Dear eBay:
I, the undersigned, CERTIFY UNDER PENALTY OF PERJURY that I am the owner or an agent authorized to act on behalf of the owner of certain intellectual property rights, said owner being named Tiffany & Co.
("IP Owner"). I have a good faith belief that the listings or materials listed below are not authorized by the above IP Owner, its agent, or the law and therefore infringe the IP Owner's rights according to state, federal, or United States law. Please act expeditiously to remove or disable access to the material or items claimed to be infringing.
I may be contacted at:

CONFIDENTIAL

Printed Name: Ewa Zalewska
Title & Company: Trademark Paralegal - Legal Department, Tiffany & Co.
Street Address: 600 Madison Avenue
City and State: New York, New York
Zip: 10022
Email (correspondence): EZalewska@Tiffany.com Email (ended auction inquiries)*:
Telephone: (212) 230-5351
Fax: (212) 230-5323
Date: 12/22/04
* Complete this blank if you want questions from sellers about removed listings directed to a different email address.
Truthfully,
/S/: Ewa Zalewska

4948464704 4948465662 4948466613 4948465087 4952670627 4952671799
4952910003 4952910584 4953070442 4953070893 4953172834 4953265065
4953292891 4953292931

Thank you, in advance, for your swift attention to this matter, Ewa M. Zalewska Tiffany & Co.
Legal Department
600 Madison Avenue
New York, NY 10022
ph. 212-230-5351
fax. 212-230-5323
ewa.zalewska@tiffany.com

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Advanced Search

Hello! Sign in or register.

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Items for Sale by doellas (33 ☆)

View items with pictures

Includes Buy It Now items, current auctions, and auctions which ended in the last 30 days. Seller, view high bidder email addresses.

EC.2004.905

Counterfeit - multiple same item sales, tip from other ebay buyer

1 - 14 of 14 total, Click on the column headers to sort.

4948464704	Dec-05-04	Dec-06-04 14:27:05 PST	$85.00	Authentic Tiffany "Elsa Peretti" 5 Teardrop Bracelet	lathon_andrews (14 ☆) (*)
4948465662	Dec-05-04	Dec-06-04 14:29:45 PST	$85.99	Tiffany "Elsa Peretti" 5 Teardrop Bracelet	sohaggard4 (2) (*)
4948466613	Dec-05-04	Dec-06-04 14:32:49 PST	$85.99	Tiffany "Elsa Peretti" 5 Teardrop Bracelet	No Bids (*)
4948465087	Dec-05-04	Dec-08-04 14:28:02 PST	$96.00	Tiffany "Elsa Peretti" 5 Teardrop Bracelet	kite106 (20 ☆) (*)
4952670627	Dec-19-04	Dec-20-04 11:33:15 PST	$89.99	Tiffany "Elsa Peretti" 5 Teardrop Bracelet 3 day shipping in US with buy it now!!! Great gift	No Bids (*)
4952671799	Dec-19-04	Dec-20-04 11:39:10 PST	$275.99	Tiffany Silver and 18K GOLD Heart Link Bracelet 3 DAY SHIPPING in US with Buy it Now!! Great Gift	No Bids (*)
4952910003	Dec-20-04	Dec-21-04 11:45:16 PST	$235.99	Tiffany Silver and 18K GOLD Heart Link Bracelet 3 DAY SHIPPING in US Express also offered	calgenjon (33 ☆) (*)
4952910584	Dec-20-04	Dec-21-04 11:48:03 PST	$98.00	Tiffany "Elsa Peretti" 5 Teardrop Bracelet 3 DAY SHIPPING in US Express also Offered!!!	noany (32 ☆) (*)
4953070442	Dec-21-04	Dec-22-04 02:51:34 PST	$235.99	Tiffany Silver and 18K GOLD Heart Link Bracelet 3 DAY SHIPPING in US Express also offered	No Bids (*)
4953070893	Dec-21-04	Dec-22-04 02:57:04 PST	$85.99	Tiffany Open Heart Earrings Ships Immediately Express Shipping Available	No Bids (*)
4953172834	Dec-21-04	Dec-22-04 13:52:19 PST	$215.99	Tiffany Silver and 18K GOLD Heart Link Bracelet 1-2 DAY Express SHIPPING AVAILABLE!!!!	No Bids Yet
4953265065	Dec-21-04	Dec-22-04 22:00:03 PST	$85.99	Tiffany Open Heart Earrings Ships Immediately Express Shipping Available	No Bids Yet
4953292891	Dec-22-04	Dec-23-04 04:07:12 PST	$85.99	Tiffany Open Heart Earrings Ships Immediately Express Shipping Available	No Bids Yet
4953292931	Dec-22-	Dec-23-04 04:07:46	$235.99	Tiffany Silver and 18K GOLD Heart Link Bracelet	No Bids Yet

TCO 024103

04	PST	3 DAY SHIPPING in US Express also offered

(*) indicates that auction has ended.

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Giving this as a gift? Print a Gift Preview to show it's on the way!

Back to home page Listed in category: Jewelry & Watches > Bracelets > Silver (Without Stone) > Link

Tiffany "Elsa Peretti" 5 Teardrop Bracelet Item number: 4948465087

Email to a friend

Bidding has ended for this item. (kite106 is the winner).

Larger Picture

Winning bid:	**US $96.00**
Ended:	Dec-08-04 14:28:02 PST
Start time:	Dec-05-04 14:28:02 PST
History:	5 bids (US $85.99 starting bid)
Winning bidder:	kite106 (20 ☆)
Item location:	Newberry, Florida United States
Ships to:	Worldwide
Shipping costs:	US $8.85 - Standard Flat Rate Shipping Service (within United States)

Shipping, payment details and return policy

Seller information

doelas (33 ☆)

Feedback Score: 33
Positive Feedback: 100%
Member since Jan-15-04 in United States

Read feedback comments
Add to Favorite Sellers
Ask seller a question
View seller's other items

Safe Buying Tips

Description (revised)

You are bidding on a Tiffany and Co. .925 Sterling Silver Five Teardrop Bracelet from the "Elsa Peretti"

Collection.

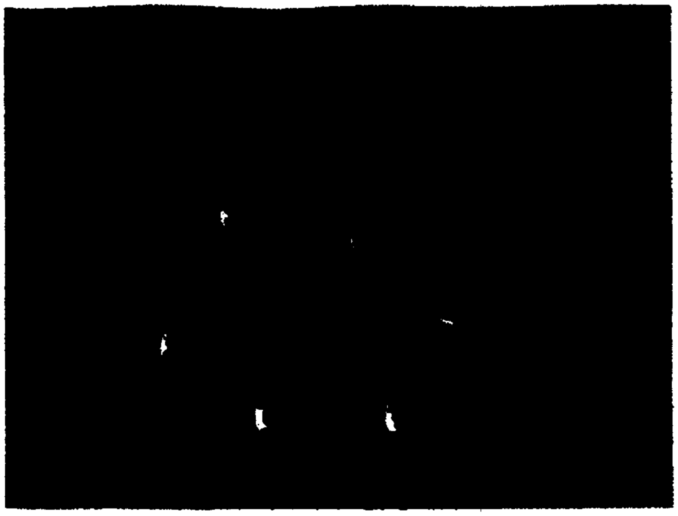
This item is Brand New, 7.25" length, with Tiffany and Co. engraving.

This is a No Reserve Auction. Highest Bidder wins!!

The item will come complete with Tiffany Gift Box, pouch and bag as seen in the picture.

FREE UPGRADE to USPS Priority Shipping with Delivery Conformation in the US with Buy It Now

This is the perfect gift for that special lady!!!



TERMS OF SALE:

ALL SALES ARE FINAL

PAYPAL PREFERRED, MONEY ORDERS ALSO ACCEPTED

PAYMENT MUST BE RECEIVED WITHIN 7 DAYS OF CLOSE OF AUCTION

FREE Counters and Services from Andale

Shipping, payment details and return policy

Shipping Cost	Services Available	Available to
US $8.85	Standard Flat Rate Shipping Service	United States Only

Will ship to Worldwide

Shipping insurance
US $6.00 Optional

Seller's payment instructions
All sales are Final. $8.85 for shipping in mainland USA (Hawaii, Alaska, and international buyers pay extra). I can ship this overnight or next day for an additional fee. Payment Information: PayPal preferred. Money Orders also accepted

Payment methods accepted

This seller, doellas, prefers PayPal.

- PayPal
- Money order/Cashiers check

Learn about payment methods.

eBay recommended services

This seller prefers to be paid with PayPal. Pay fast and get your item faster! Sign up for PayPal!

Where to go next?

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Seller assumes all responsibility for listing this item.

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Giving this as a gift? Print a Gift Preview to show it's on the way!

Back to home page   Listed in category: Jewelry & Watches > Earrings > Other Styles

Tiffany Open Heart Earrings [illegible]

Ships [illegible]

You are signed in   Email to a friend | Watch this item in My eBay

Larger Picture

Starting bid:	US $85.99
Time left:	16 hours 42 mins 1-day listing Ends Dec-22-04 22:00:03 PST
Start time:	Dec-21-04 22:00:03 PST
History:	0 bids
Buy It Now Price:	US $99.00
Item location:	Newberry, Florida United States
Ships to:	Worldwide
Shipping costs:	US $8.85 - Standard Flat Rate Shipping Service (within United States)

Shipping, payment details and return policy

Seller information

doelias (33 ★)

Feedback Score: 33
Positive Feedback: 100%
Member since Jan-15-04 in United States

Read feedback comments
Add to Favorite Sellers
Ask seller a question
View seller's other items

Safe Buying Tips

Description

You are bidding on a pair of

TCO 024108

Tiffany .925 Sterling Silver Open Heart Earrings(Mini) for pierced ears.

These earrings are Brand New, never worn, with Tiffany engraving.

The item will come complete with Tiffany Gift Box, pouch and bag.

FREE Upgrade to USPS Priority shipping with Delivery Confirmation in US with Buy it Now

In A HURRY-Inquire about Express and Global Express rates

This is the perfect gift for that special lady!!!

We also carry a matching bracelet and necklaces just inquire!!

TERMS OF SALE:

ALL SALES ARE FINAL

PAYPAL PREFERRED, MONEY ORDERS ALSO ACCEPTED

PAYMENT MUST BE RECEIVED WITHIN 7 DAYS OF CLOSE OF AUCTION

FREE Counters and Services from Andale

Shipping, payment details and return policy

Shipping Cost	Services Available	Available to
US $8.85	Standard Flat Rate Shipping Service	United States Only

Will ship to Worldwide

Shipping insurance
US $5.00 Optional

Seller's payment instructions
All sales are Final. $8.85 for shipping in mainland USA (Hawaii, Alaska, and International buyers pay extra). I can ship this overnight or next day for an additional fee. Payment Information: PayPal preferred. Money Orders also accepted

Payment methods accepted

This seller, doelias, prefers PayPal.

- PayPal
- Money order/Cashiers check

Learn about payment methods.

eBay recommended services

This seller prefers to be paid with PayPal, the safe and easy way to pay online. Sign up for PayPal it is free!

Ready to bid or buy?

help

Tiffany Open Heart Earrings

Place a Bid

Starting bid: US $85.99

Your maximum bid: US $ (Enter US $85.99 or more)

[redacted] You will confirm in the next step.

eBay automatically bids on your behalf up to your maximum bid.
Learn about bidding.

or

Buy It Now

Buy It Now price: US $99.00

[redacted] You will confirm in the next step.

Purchase this item now without bidding.
Learn about Buy It Now.

What else can you do?

Back to home page | Ask seller a question | Add to Calendar | Email this item to a friend | Printer friendly page

Seller assumes all responsibility for listing this item.

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Exhibit 2

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------X
TIFFANY (NJ) INC. and TIFFANY and COMPANY,

Plaintiffs,

v. No. 04-Civ. 4607 (NRB)

eBAY INC.,

Defendant.
------------------------------X

DEPOSITION OF EWA ZALEWSKA

New York, New York

Wednesday, July 20, 2005

Reported by:
ANNETTE ARLEQUIN, CSR, RPR
CSR NO. 1450

faith determination on.

Q. So by characteristics, you're referring to the criteria that you discussed earlier in the deposition?

A. Yes.

Q. Now does Tiffany use investigative guidelines to determine if a listing is counterfeit?

A. Not myself, but perhaps the security and investigations department.

MR. COHEN: Let's mark this as the next exhibit. This is a document that is Bates stamped TCO 24100 through 24110 and this will be Zalewska Exhibit 6.

(Defendant's Exhibit Zalewska-6, E-mail from Zalewska to eBay seller with attachments, marked for identification, as of this date.)

BY MR. COHEN:

Q. Can you identify this document?

A. It appears to be an e-mail that I sent to an eBay seller whose auctions I reported.

Q. And in point No. 2 on the first page

you say, "Based on our investigative guidelines, we determine that we did indeed have a good faith belief that your items were in fact counterfeit."

What did you mean?

A. I was referring to investigative guidelines, not necessarily investigative like an investigator, but rather more as to the criteria that we use, again, to determine whether or not an item is counterfeit, the data that we use from the eBay auction.

Q. And looking at the attached documents, are you able to tell us what data led you to your good faith belief?

(Witness reviewing exhibit.)

A. Well, I indicate in the e-mail that the photo was one of the criteria used and I can't tell from obviously these photocopies what the photo looked like.

In addition to that, I would have noted that the seller had multiple Tiffany sterling silver listings over the course of -- those actually might be current listings. So this might not even be over the course of

30 days. So multiple items currently listed, which would be a red flag. They describe the item as brand new. If the item were sold at retail brand new, it would have a much higher manufacturer retail price than the winning bid of $96. So there would be no economic incentive to sell a brand-new Tiffany item at that price, and I had a tip from another eBay member.

Q. In the course of the buying program that we were discussing earlier, did Tiffany buy five or more items from any particular seller?

A. I cannot recall but it may have happened.

Q. Do you recall outside the buying program, any instance where Tiffany purchased five or more items from a particular seller?

A. I cannot recall.

Q. Do you recall any instance where Tiffany purchased an item from a seller selling five or more Tiffany items?

A. Purchased an item?

Q. Correct.

A. Again, I can't recall.

Q. Now do you also take the geographical

CERTIFICATE OF SERVICE

I, Dorothy N. Giobbe, the undersigned attorney at law duly admitted to practice in the State of New York, respectfully show that on the 29th day of August, 2005, I caused the annexed **DECLARATION OF DOROTHY N. GIOBBE IN SUPPORT OF PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO AMEND ITS ANSWER** to be served via hand delivery upon:

Adam Cohen, Esq.
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 833-3148

Dorothy N. Giobbe